

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

**BUDGET CONSTRUCTION SERVICES L L C CASE NO. 2:22-CV-01927
L C**

VERSUS

JUDGE JAMES D. CAIN, JR.

**ICTORY EXTERIORS ROOFING & MAGISTRATE JUDGE LEBLANC
SHEET METAL L L C ET AL**

MEMORANDUM RULING

Before the court are a Motion to Dismiss for Failure to State a Claim and Motion to Strike [doc. 24] filed by defendants Budget Construction & Roofing Inc.; Tanner Lee Curry; Victory Exteriors LLC; and Victory Exteriors Roofing & Sheet Metal LLC. The motions relate to the First Amended Complaint [doc. 23] filed by plaintiff Budget Construction Services, LLC, raising fraud claims against the defendants.

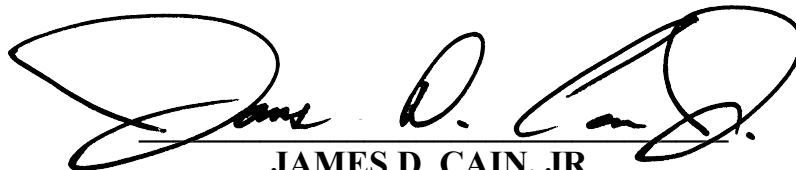
Plaintiff alleged that it worked with defendants on a number of projects in the Lake Charles area after Hurricane Laura and that defendants wrongfully deposited checks made payable to plaintiff into their own accounts without plaintiff's authority. Doc. 23. Defendants moved to dismiss the claims under Federal Rule of Civil Procedure 12(b)(6). They also requested that the court strike certain allegations under Federal Rule of Civil Procedure 12(f).¹ In support, defendants attached a contract that purportedly governed their relationship with plaintiff and discussed the terms of payment/funding between the parties.

¹ They also requested that the court order a more definite statement under Rule 12(e), but the court denied the motion in this regard. Doc. 30.

Docs. 24, 25. Noting that the contract fell outside the scope of its review under Rule 12(b)(6), the court converted the Rule 12(b)(6) motion into a Motion for Summary Judgment and held the Motion to Strike in abeyance. Doc. 30. It then allowed the parties additional time to conduct necessary discovery and submit supplemental briefing. Doc. 30.

Over one year has passed since that ruling and nothing has been filed. The court cannot evaluate the merits of defendants' arguments without review of the contract, but defendants have not done the work necessary to convert this matter to a motion for summary judgment. Accordingly, the Motion to Strike and Motion to Dismiss [doc. 24] will be **DENIED**, without prejudice to defendants' right to raise these arguments through a motion filed under Federal Rule of Civil Procedure 56.

THUS DONE AND SIGNED in Chambers on the 14th day of May, 2024.

A handwritten signature in black ink, appearing to read "James D. Cain, Jr.", is written over a horizontal line.

JAMES D. CAIN, JR.
UNITED STATES DISTRICT JUDGE